

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ERICA T. YITZHAK, THE LAW OFFICES OF ERICA
T. YITZHAK AND ERICA T. YITZHAK, ESQ. P.C.,

Case No. 1:23-cv-02084-JHR

VERIFIED ANSWER

Plaintiffs,

-against-

PAUL WILLIAM VERNER, VERNER AND SIMON,
VERNER AND SIMON, P.C., VERNER AND SIMON,
LLP,

Defendants,

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Defendants PAUL WILLIAM VERNER, VERNER AND SIMON, VERNER AND
SIMON, P.C., VERNER AND SIMON, LLP, (collectively as “Defendants”), by their attorneys
Lewis Brisbois Bisgaard & Smith LLP, as and for their Answer to the Complaint, allege as follows:

1. Defendants deny each and every allegation contained within the paragraphs of plaintiffs’ Verified Complaint designated as “5”, “6”, “7”, and “8”.
2. Defendants deny having knowledge or information sufficient to form a belief as to the truth of each and every allegation contained within the paragraphs of plaintiffs’ Verified Complaint designated as “1”, “2”, “3”, “4”, “10”, “11”, “12”, “13”, “14”, “15”, “16”, “17”, “18”, “19”, “20”, “21”, “22”, “23”, “24”, “25”, “26”, “27”, “28”, “29”, “30”, “31”, “32”, “33”, “34”, “35”, “36”, “37”, “38”, “39”, “40”, “41”, “42”, “43”, “44”, “45”, “46”, “47”, “48”, “49”, “50”, “51”, “52”, “53”, “54”, “55”, “56”, “57”, “58”, “59”, “60”, “61”, “62”, “63”, “64”, “65”, “71”, “72”, “73”, “74”, “75”, “76”, “77”, “78”, “79”,

3. Defendants denies the allegations set forth in paragraphs “66”, “67”, “68”, “69”, “70”, “75[SIC]¹”, “76”[SIC]²”, “77[SIC]³”, “78[SIC]⁴”, “79[SIC]⁵”, “80”, “81”, “82”, “83”, “84”, “85”, “86”, “87”, “88” “89”, “90”, and “91” of the Verified Complaint and respectfully refers all questions of law to be determined by the Court.

AS AND FOR THE DEFENDANTS’ FIRST AFFIRMATIVE DEFENSE

Upon information and belief, Plaintiffs have failed to state a cause of action against the Defendants upon which relief can be granted.

AS AND FOR THE DEFENDANTS’ SECOND AFFIRMATIVE DEFENSE

Upon information and belief, the actions complained of were in full accord with the applicable law.

AS AND FOR THE DEFENDANTS’ THIRD AFFIRMATIVE DEFENSE

Upon information and belief, the claims are barred by the doctrines of waiver, consent, acquiescence, and/or ratification.

AS AND FOR THE DEFENDANTS’ FOURTH AFFIRMATIVE DEFENSE

Upon information and belief, any injury or damages sustained by plaintiffs, as alleged in the Complaint, were caused in whole or in party by the contributory or comparative negligence and/or culpable conduct of said plaintiff and not as a result of any negligence and/or culpable conduct on the part of the Defendants.

AS AND FOR THE DEFENDANTS’ FIFTH AFFIRMATIVE DEFENSE

¹ Plaintiff’s Verified Complaint’s contains two allegations that are numbered 75, 76, 77, 78, and 79. This denial is in reference to the allegations under Plaintiff’s “FIRST CAUSE OF ACTION (Legal Malpractice)”.

² Please see footnote 1.

³ Please see footnote 1.

⁴ Please see footnote 1.

⁵ Please see footnote 1.

Upon information and belief, no acts of omissions by the Defendant were an actual cause, legal cause, contributing cause, substantial factor or proximate cause with respect to the damages if any, sustained by the plaintiff.

AS AND FOR THE DEFENDANTS' SIXTH AFFIRMATIVE DEFENSE

Upon information and belief, Plaintiffs have not suffered any legally cognizable damages.

AS AND FOR THE DEFENDANTS' SEVENTH AFFIRMATIVE DEFENSE

Upon information and belief, Defendants reserve their right to amend this pleading to reflect additional affirmative defenses as may be revealed through discovery and further pleadings.

AS AND FOR THE DEFENDANTS' EIGHTH AFFIRMATIVE DEFENSE

Upon information and belief, the Defendants, their officers, agents, servants and/or employees, at all times mentioned in the Verified Complaint, acted without malice, without intent to cause harm or injury, without willful, reckless and wanton disregard of the safety of plaintiffs, and acted in good faith and with probable cause and justification, without such conduct having exceeded that which was required under the circumstances.

AS AND FOR THE DEFENDANTS' NINTH AFFIRMATIVE DEFENSE

Upon information and belief, the Verified Complaint fails to provide any factual support for a claim of deliberate indifference against the Defendants.

AS AND FOR THE DEFENDANTS' TENTH AFFIRMATIVE DEFENSE

Upon information and belief, Plaintiffs' alleged injuries were not proximately caused by the Defendant's failure to discharge mandatory duties.

AS AND FOR THE DEFENDANTS' ELEVENTH AFFIRMATIVE DEFENSE

Any and all mandatory duties imposed on the Defendants, the failure of which is the subject of this Complaint, were exercised with reasonable diligence and, therefore, the Defendants are not liable to plaintiffs for plaintiffs' alleged injuries.

WHEREFORE, Defendants demand judgment dismissing the Complaint as against them, in its entirety, with prejudice, together with the costs and disbursements of this action, and such other relief as deemed just by the Court.

Dated: New York, New York
May 15, 2023

**LEWIS BRISBOIS BISGAARD &
SMITH LLP**

Erin O'Leary

By: Erin O'Leary, Esq.
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CERTIFICATE OF SERVICE

Erin O'Leary, an attorney duly admitted to practice before this Court, certifies that on May 15, 2023, she caused to be served via ECF a copy of Defendants' Answer to Verified Complaint. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

TO: Andrew L. Bluestone, Esq.
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/s/ Erin O'Leary
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